

LIBERALIZATION MONITORING 04-2009

Darya Katkouskaya

Summary

This Liberalization Monitoring is a review of new regulatory legal acts of the Republic of Belarus adopted in the period December 2008 through May 2009 within the framework of the Plan of priority actions to liberalize the economic environment adopted by Instruction of Prime Minister Sergei Sidorski #39/2004¹ dated December 1, 2008 and general society liberalization efforts declared by the President of the Republic of Belarus.

The action plan includes 18 sections that may be considered official priority areas for liberalization, each one of them being subject to a specific package of measures, performance methods, and timeframes and designated state authorities responsible for implementation.

Amendments to registration and liquidation of economic entities and their basic activities

One of the best-known and most essential liberalization moves was Decree of the President #1 "On state registration and liquidation (termination of activity) of economic entities"² dated January 16, 2009 and a wide number of regulatory legal acts adopted in pursuance of Decree #1. On February 1, 2009, Belarus introduced registration of business by declaration: registration is finalized on the day of application by way of sealing of the charter and making an entry in the Unified state register of legal entities and individual entrepreneurs of the Republic of Belarus, whereas the state registration certificate is issued on the following workday. State registration cannot be denied if the application contains correct documents. The information presented in applications is not checked by the registration authority, and the applicant is responsible for the correctness of the data it declares. The decree envisages liability for declaration of false information. The document eliminates start-up capital requirements, abolishes the requirement that businesses list all planned activities and inform the registration authority about changes in the location of the business. Also, the decree simplifies procedures for closing a business, cuts the list of reasons for liquidation and introduces one-stop liquidation.

Another step towards liberalization was simplification of lease relations for economic entities. Decree of the President #24 "On certain aspects of lease of capital facilities

¹<http://w3.main.gov.by/ministry/economy.nsf/c0f0523c581097c9c225701900349321/7fc7c5d8ced22284c225757b0030f9dd?OpenDocument&ExpandSection=1>

² <http://www.pravo.by/webnpa/text.asp?RN=pd0900001>

(buildings and constructions), detached premises”³ adopted on December 19, 2008 introduced a minimum lease and sublease terms of three years and allowed shorter lease terms only if agreed with tenants. Lease relations of this kind and property titles resulting from lease contracts are not subject to state registration irrespective of their term. Instead, landlords are supposed to notify within 10 days local property registration authorities of the conclusion of a lease agreement if the agreement is concluded for a period exceeding 12 months.

Ordinance of the President #689 “On certain measures to improve controlling activities and supervision in the Republic of Belarus”⁴ dated December 19, 2008 suspended inspections/checks of corporate business entities and individual entrepreneurs for the period until a special ordinance of the head of state on supervision and inspections comes into effect. The document also provided a list of obligatory inspections/checks that are not subject to the moratorium.

April 1, 2009 saw the amendments introduced by Ordinance of the President #178 “On procedures for carrying out and monitoring of foreign trade operations”⁵ come into effect (the ordinance was signed on March 27, 2009). They had been adopted to simplify foreign trade operations and cut red tape. The ordinance replaces the procedure of making out foreign trade operation IDs (“transaction passports”) with a simpler procedure of registration in a commercial bank, abolishes registration requirements for export operations on condition of advance payment and for import operations on condition of advance delivery, allows discharge of obligations by way of factoring transactions, non-monetary offset (in this case overregistration of the transaction is required), offers a shorter list of operations subject to monetary control (unlike the previous list, this one does not include rent, lease, insurance, loan and credit transactions, etc.).

Ordinance of the President #178⁶ dated April 6, 2009 introduced amendments to Ordinance #508⁷ dated November 12, 2003, which regulated bankruptcy procedures: the new document optimizes economic insolvency (bankruptcy) procedures and activity of turnaround managers. Commissions for bankruptcy prevention with local legislative and executive authorities will analyze the efficiency of pre-judicial turnaround and rehabilitation efforts. Turnaround managers acting on the basis of accreditations, will be enabled to take part in bankruptcy procedures and provide additional services during the bankruptcy campaign, including legal and evaluation services, consultations, etc. Also, the ordinance lifted the restriction on the number of cases considered by a single turnaround manager and introduced a mechanism for paying compensations to managers from the republican budget in case the debtor is short of assets.

On May 5, 2009, the President signed Ordinance #232 “On certain issues of holding auctions (tenders)”⁸, which is part of the package of measures to liberalize the regulatory framework for economic activities. The ordinance bans charging participants in auctions and competitive tenders for arranging and holding of and bidding in tenders. Under the ordinance, information about auctions and tenders must be available to the wide public and will be provided free of charge. Other documents related to auctions and competitive tenders were also addressed. On April 21, 2009, Ordinance of the President #215⁹ was signed to abolish the exemption of procurement of certain commodities (mineral fertilizers, medications and medical equipment, etc.) from tendering procedures; all procurement procedures became subject to general rules starting April 21, 2009, and procurement contracts signed prior to that date were completed following previous regulations.

Ordinance of the President #194¹⁰ dated April 15, 2009 altered the priority of payments, however, the changes will only come into effect on January 1, 2010. The following statuses of payments were adopted: extraordinary, first priority, second priority and third priority.

³ <http://www.pravo.by/webnpa/text.asp?RN=pd0800024>

⁴ <http://www.pravo.by/webnpa/text.asp?RN=p30800689>

⁵ <http://www.pravo.by/webnpa/text.asp?RN=p30800178>

⁶ <http://www.pravo.by/webnpa/text.asp?RN=p30900178>

⁷ <http://www.pravo.by/webnpa/text.asp?RN=p30300508>

⁸ <http://www.pravo.by/webnpa/text.asp?RN=p30900232>

⁹ <http://www.pravo.by/webnpa/text.asp?RN=p30900215>

¹⁰ <http://www.pravo.by/webnpa/text.asp?RN=p30900194>

Besides, the document abolishes limitations on cash settlements between legal entities of Belarus. The President instructed the central bank to introduce a new procedure for such payments.

Ordinance #170¹¹ dated April 2, 2009 introduced amendments to handicraft activities. A craft activity is defined as a non-entrepreneurial independent (not involving other persons) activity performed by individuals aimed at production and sale of commodities (services, work) with the use of manual labor and tools catering for household consumers. Such activities may be performed without being registered as an individual entrepreneur. The ordinance extended the list of craft activities by adding book binding, production of adornments, leather goods, decorative flowers and furniture fittings.

Changes in labor compensation procedures

The following regulatory acts were adopted with respect to labor compensation. Decree of the President #2 "On stimulation of employees of national economy organizations"¹² dated January 23, 2009, all payments encouraging a worker (bonuses, extras and rewards) may be attributed to costs (and made tax-deductible) in the amount not exceeding 80% of the compensation package. Organizations that report return on sales in the previous year at least at the level of the annual forecast or the target set in the business plan are entitled to increase the quota to 100% throughout one year. Procedures of using payments to stimulate workers are stipulated in specific labor contracts and local regulatory legal acts.

Ordinance #49 dated January 23, 2009 "On certain aspects of promotion of sales of products, commodities (services, work) in 2009"¹³ enables directors of commercial organizations to pay monthly bonuses to the employees that contribute to increases in sales, currency proceeds, export revenues, etc. without setting any limits for bonus payments, provided no other stimulating remuneration is provided. The size and conditions of bonus payments are set by local regulatory acts. Also, the ordinance entitles employers to adjust the amount of compensations for directors of enterprises depending on the reduction in inventories and progress in sales of commodities and services. Such compensations are included in costs and are thus made tax-deductible.

Resolution of the Council of Ministers #288¹⁴ dated March 6, 2009 applies to the directors of companies that are not subject to Ordinance #49 and allows the compensation paid to the director of an organization irrespective of the form of incorporation to exceed the average wage paid in the organization five times, up from four times previously.

Changes in taxation, price-formation and accounting procedures

A number of serious amendments to taxation acts were introduced on January 1, 2009. The main changes pertain to:

- the profit tax and income tax;
- the value-added tax (the list of transactions and sales not subject to the VAT were extended, tax computation procedures were adjusted, and, unlike previously, taxpayers do not need to produce a VAT declaration if there is no tax entity, etc.);
- the progressive income tax rate for individuals was replaced with a flat rate of 12%; a single 15% profit tax rate was set for entrepreneurial activity;
- the oil refining tax rate was increased in the scope of the mineral extraction taxation system;

¹¹ <http://www.pravo.by/webnpa/text.asp?RN=p30900170>

¹² <http://www.pravo.by/webnpa/text.asp?RN=pd0900002>

¹³ <http://www.pravo.by/webnpa/text.asp?RN=p30900049>

¹⁴ <http://www.pravo.by/webnpa/text.asp?RN=c20900288>

- the tax entity definition was changed in the property taxation system for organizations from the value of basic assets to buildings and constructions, including constructions in progress, which organizations own or otherwise possess;
- the list of land taxation benefits was extended; and procedures of computation of areas subject to taxation were revised;
- the rate of transfers to the republican agriculture support fund was halved to 1% of revenues of organizations;
- the rate of the sales tax in retail trade was cut to not more than 5%; this rate is applied to retail trade in domestic and imported goods;
- the rate of the service tax was halved to not more than 5% of the taxation base;
- amendments were introduced to the General Part of the Tax Code of the Republic of Belarus¹⁵ with respect to the procedure of determining the residence time in the Republic of Belarus for tax residence purposes; procedure for designation of authority to represent interests in tax matters; abolition of the requirement to produce empty tax declarations; introduction of test mode electronic tax declarations; specification of procedures to appeal against decisions of tax authorities;
- Ordinance of the President #1¹⁶ dated January 3, 2009 amended the system of simplified taxation: the ordinance made easier the change to the simplified taxation system, altered the procedure for determining the number of personnel, introduced rent benefits applicable to land plots in state ownership and cut tax rates.

In the price-formation segment, the Instruction on formation of prices and tariffs approved by Resolution #183¹⁷ of the Council of Ministers dated September 10, 2008 was amended with respect to the inclusion of the cost of materials, components and spare parts, fittings, etc. in service tariffs and procedure of computation of profitability rates for tariff formation, etc.

Resolution of the Council of Ministers #1903¹⁸ dated December 9, 2008 adopted the Provision on sale of commodities (services, work) at prices (tariffs) set based on the market situation. The provision will remain in effect until January 1, 2010. The document allows sales of commodities at prices standing below production costs and below the acquisition price by way of reducing the wholesale markup, etc.

Ordinance of the President #70 "On certain measures to stabilize prices (tariffs) in the Republic of Belarus" was adopted on February 6, 2009 to amend Ordinance #285¹⁹ dated May 19, 1999. The chief novelty is the abolition of the requirement to register prices (tariffs) for new commodities (services and work), except for new fee-based medical services. Resolution of the Council of Ministers #353 "On registration of selling prices (tariffs)"²⁰ adopted in pursuance of Ordinance #70 on March 25, 2009 specified that registration applied to prices/tariffs for commodities and services offered by the legal entities that fail to meet the price caps requirements. The new requirement also applied to fee-based medical services. New prices and tariffs are registered by simple notification.

As far as accounting procedures are concerned, the Finance Ministry, Economy Ministry and Labor and Social Security Ministry on October 30, 2008 adopted by joint resolution #201/160/151 the Basic provisions on composition of costs, which are included in production costs. No significant changes were introduced, though.

Resolution of the Council of Ministers #327²¹ dated March 18, 2009 enables organizations and individual entrepreneurs not to calculate depreciation for all or selected capital assets or

¹⁵ <http://www.pravo.by/webnpa/text.asp?RN=hk0200166>

¹⁶ <http://www.pravo.by/webnpa/text.asp?RN=p30900001>

¹⁷ <http://w3.economy.gov.by/ministry/economy.nsf/c0f0523c581097c9c225701900349321/07e7d2f6eaf70c7cc22574c50045d9a1?OpenDocument>

¹⁸ <http://www.pravo.by/webnpa/text.asp?RN=c20801903>

¹⁹ <http://www.pravo.by/webnpa/text.asp?RN=p39900285>

²⁰ <http://www.pravo.by/webnpa/text.asp?RN=c20900353>

²¹ <http://www.pravo.by/webnpa/text.asp?RN=c20900327>

intangible assets used in entrepreneurial activities. The depreciable life of assets is therefore extended by the term equal to the period during which depreciation was not calculated.

Certification and hygienic registration

Resolution of the State Standardization Committee of the Republic of Belarus dated December 16, 2008²² abolished the old List of products, services, personnel and other entities subject to compulsory conformance evaluation and adopted a new List. The new one is some 40% shorter and does not require certification of certain fire-fighting and production equipment, products from precious metals, construction materials, oil products, certain foodstuffs, etc. In some cases certification procedures are replaced with mandatory declaration of conformance. On March 3, 2009, the State Standardization Committee abolished compulsory certification of services of tour operators and glass production and installation operations during construction.

The Council of Ministers amended by its Resolution #254²³ dated February 26, 2009 the procedure of state hygienic regulation and registration of chemical and biological agents, materials and products, raw materials, and foodstuffs, etc. with respect to provision of documents, registration and decision-making procedures, and with regard to a considerable increase in the validity of state hygienic registration certificates.

Innovation activities, production incentives

Ordinance of the President #123 "On certain measures to stimulate innovation activity in the Republic of Belarus"²⁴ authorized legal entities involved in scientific, scientific and technical activities without budget financing and/or production of high-technology commodities (services, work) to independently set prices for their products and determine suppliers and buyers of high-technology products within two years. The legal entities in question are exempted from mandatory surrender of currency, transfers to the agro support fund and are allowed to attribute some of their sales proceeds to costs.

The President signed Ordinance #175 "On measures to develop production of passenger cars"²⁵ on April 4, 2009 to exempt the companies that arrange assembly of passenger cars under agreements with the Industry Ministry of Belarus from the profit tax, excise taxes, payments to the republican agriculture support fund charged on produced motorcars and components within three years. Car producers are supposed to take out relevant certificates to enjoy benefits.

Customs duties

In order to encourage exports, the President on March 7, 2009 signed Ordinance #135²⁶ to abolish export duties on fish products, wood products and timber, products from precious metals and precious metal scrap, etc. that are exported beyond the territory of the Eurasian Economic Community.

However, as if to balance the above indulgence, the President signed Ordinance 214 "On temporary import customs duties on certain commodities" on April 21 to introduce temporary (for six and nine months) increased customs duties on imports of some commodities (the document includes the list of such commodities). The list includes household appliances, foods, furniture, vegetables, etc.

²² <http://www.gosstandart.gov.by/txt/Ob-podtv-sootv/docs/resolution2007-60.pdf>

²³ <http://www.pravo.by/webnpa/text.asp?RN=c20900254>

²⁴ <http://www.pravo.by/webnpa/text.asp?RN=p30900123>

²⁵ <http://www.pravo.by/webnpa/text.asp?RN=p30900175>

²⁶ <http://www.pravo.by/webnpa/text.asp?RN=p30900135>

Conclusion

Of the 18 priority areas outlined in the government's action plan few remained unaffected by regulatory reform. Also, a large package of subordinate acts and by-laws were passed over the past six months to specify the way certain administrative procedures should be implemented by the state authorities.

The most significant move producing tangible results was the creation of a new liberal and de-bureaucratized system of state registration of new businesses. All regulatory changes have been applied structurally and on a full scale. Other quite successful steps included changes in certification and hygienic registration procedures, as well as lease relations reform.

Nevertheless, despite the generally positive evaluation of the regulatory upgrade in many branches, one should note that most of them are still sporadic and deal with "pinpoint targets": they do have a positive effect; however, they fail to address the system as a whole, hence insignificant favorable impact on the business environment in Belarus. There have been no significant changes in labor compensation procedures or rules for attributing expenses to costs for most of Belarusian commercial organizations. There have been few changes in price formation rules, because most commodities are still subject to old pricing rules, and the "free price area" is still narrow; there are still indicative price caps, restrictions on settlement procedures and currency surrender requirements. Besides, some crucial acts have never been adopted, like an integrated regulatory legal act on licensing and the Special Part of the Tax Code; the tax on retail sales has not been abolished and neither have been some import and export limitations.

Ordinance #214 has had a serious adverse impact on many businesses, since the hikes in import duties have eliminated the modest progress achieved previously through regulatory reform.